buat bayaran caruman di bawah Akta Keselamatan Sosial Pekerja-pekerja 1969. Di bawah Akta tersebut tidak ada peruntukan yang menghalang sesiapapun tidak kira berapa umurnya untuk menjadi seorang yang berinsuran atau 'insured person'. Di samping itu Akta (Pekerjaan) Kanak-Kanak dan Orang-Orang Muda 1966 tidak juga menghalang kanak-kanak atau orang-orang muda mengikat perjanjian dalam satu kontrak perkhidmatan kerana mereka itu adalah kompeten untuk berbuat demikian (s 13). Tetapi kanak-kanak dan orang-orang muda seperti plaintif menjadi pekerja dalam tempuh masa bagi kes ini, adalah seorang pekerja bagi sepenuh masa dengan gaji sebanyak $120 sebulan dan bukan seorang yang digaji secara 'casual nature' sebagaimana yang dihadkan oleh Butiran 2, Jadual Pertama, Akta Keselamatan Sosial Pekerja-Pekerja 1969. Akta tersebut tidak memberi definasi kepada perkataan 'casual nature'. Namun demikian, pada pendapat saya apa yang dimaksudkan ialah seorang yang digaji dengan tidak mengerjakan sesuatu kerja itu untuk keseluruhan masa yang tertentu. Dalam lain perkataan, sekiranya ada tugas dalam sesuatu jenis pekerjaan maka orang yang digaji itu akan menjalankan tugas itu dan apabila tugas itu tidak ada lagi bagi sementara waktu maka siperkerja yang berkenaan akan diberhentikan. Oleh itu bagi saya tidak ada was-was lagi bahawa plaintif adalah seorang pekerja yang berinsuran dan majikannya (defendan) ada membuat caruman sebagaimana yang dikehendaki oleh Akta Keselamatan Sosial Pekerja-Pekerja 1969.

Berdasarkan alasan-alasan di atas, maka saya luluskan permohonan di kandungan 2 dan tolak permohonan di kandungan 6.

Perintah berikutan.

Peguamcara: *Raghbir Singh Gill & Co; KS Bhal & Co.*

Dilaporkan oleh *Neoh Lay Choo*

United Malayan Banking Corp v Syarikat Perumahan Luas Sdn Bhd

HIGH COURT (PENANG) — ORIGINATING SUMMONS NO 24(31)-835-1986
EDGAR JOSEPH JR J
11 DECEMBER 1990

Legal Profession — Costs — Gross sum bills of costs delivered — Clients asking for costs to be taxed — Whether gross sum bills may be withdrawn — Whether solicitors may deliver bills for larger sums for taxation — Assent by clients to taxation — Whether given under undue influence exerted by taxing solicitors — Whether interest allowed on disbursements incurred by solicitor — Civil Law Act 1956, s 11 — Legal Profession Act 1976, ss 121, 132 & 133 — Rules of the High Court 1980, O 59 rr 34, 35 & 36

In this case, taxing solicitors had applied for a review by the court of the taxation of their bill of costs as between themselves and their clients which had been undertaken by the senior assistant registrar of the court. The senior assistant registrar had allowed the sum of $65,658.45 but following review she allowed the sum of $40,454.15 inclusive of allocatur fees.

The clients were the chargees under a charge registered under the National Land Code 1965 and had engaged taxing solicitors to resist an application by the chargors for an order to set aside an order enforcing the charge by way of sale previously made. The chargors were granted the declaration sought as well as the order for the setting aside of the order for sale.

Before the hearing of the application to set aside the order for sale, the taxing solicitors had informed their clients by letter that their fees would be substantial in view of the complexity of the matter but no fee was agreed upon. The taxing solicitors submitted two gross sum bills of costs, one for the High Court proceedings for the sum of $40,000 and another for the Supreme Court proceedings for the sum of $50,000. The clients replied by letter that the bills were on the high side and asked the taxing solicitors to have the bills taxed in the High Court on their behalf. The taxing solicitors replied by letter agreeing to the request for taxation, saying that the gross sum bills were withdrawn and that they would be maximizing strictly in accordance with the law their fees and costs. They cautioned the clients to seek independent legal advice once the bill of costs was served on them. They asked for confirmation that the bills of costs were to be taxed and that by mutual consent no reliance was to be placed on the gross sum bills which were to be withdrawn. The clients retained another firm of solicitors and later replied by letter, with a copy to their new solicitors, giving the confirmation sought and asking for the 'final bill on the civil proceedings' and for 'fresh bills'.

It was argued that although at first glance it would appear from contemporary correspondence in the case that the clients had assented to the taxing solicitors withdrawing the gross sum bills of costs and filing a fresh bill of costs for taxation, on a proper construction thereof, and having regard to the circumstances of the case, the clients' assent was not a true assent since it was given as a result of advice given by taxing solicitors which was not independent advice and that the assent given was vitiated by undue influence exerted by taxing solicitors. Counsel for the clients took a preliminary objection, saying that it was not open to the taxing solicitors to make a claim for interest on the amount allowed for taxation as the taxing solicitors had not taken the point in a cross objection notice addressed to the senior assistant registrar.

Held, allowing the application:

(1) Unless it can be demonstrated that the taxing registrar had erred on a question of principle, the court would have no jurisdiction to interfere.

(2) The effect of ss 121(1) and 132 of the Legal Profession Act 1976 ('the Act') is that a solicitor might be remunerated in respect of contentious business done by him, which is not the subject of an agreement, by a gross sum but he has to deliver a detailed bill of charges on demand in which case it can be taxed. In such a situation, the gross sum bill is wiped out, it being of 'no effect' with the result that the detailed bill is not explanatory of the gross sum bill but is a substituted bill for all purposes so that the amount claimed therein may be increased.

(3) In the circumstances, the submission that the clients' assent to have the bills of costs taxed and to treat the gross sum bills as withdrawn because it was vitiated by undue influence exerted by taxing solicitors must lose all its sting.

(4) The object of an award of interest is not to compensate a successful party for any damage done but for him being kept out of his money. Moreover, the interest is claimable by a solicitor even though it is not stated in his note of charges. Under s 133 of the Act, taxing solicitors are entitled to request the court to allow interest on disbursements advanced on the overdraft rate which taxing solicitors had in fact to bear. The taxing solicitors had in fact financed the clients' litigation relying on an overdraft account for that purpose. An award of interest on disbursements and costs incurred by taxing solicitors on behalf of clients is a legal entitlement of a consequential nature and so is not an item within the meaning of the Rules of the High Court 1980, O 59 r 34(1). Alternatively, reason and justice point to the conclusion that taxing solicitors should be awarded interest on the disbursements and costs incurred by them on behalf of the clients. Interest should run from the date when the taxing solicitors are retained.

[Bahasa Malaysia summary

Di dalam kes ini, peguamcara penetapan kos telah memohon untuk kajian semula oleh mahkamah tentang penetapan bil kos antara mereka dan klien mereka yang telah dilakukan oleh penolong kanan pendaftar mahkamah. Penolong kanan pendaftar telah meluluskan jumlah $65,658.45 tetapi selepas kajian semula, beliau meluluskan jumlah $40,454.15 termasuk fee alokatur.

Klien adalah pemegang gadaian di bawah satu gadaian yang didaftarkan menurut Kanun Tanah Negara 1965 dan mereka telah menggaji peguamcara penetapan kos untuk menentang satu permohonan oleh penggadai untuk perintah mengetepikan satu perintah pelaksanaan gadaian itu melalui jualan yang telah dibuat sebelum itu. Penggadai telah diberikan deklarasi yang dipohon bersama perintah mengetepikan perintah jualan itu.

Sebelum pembicaraan permohonan untuk mengetepikan perintah jualan, peguamcara penetapan kos telah memberitahu klien mereka melalui surat bahawa fee mereka mungkin besar jumlahnya memandangkan kerumitan perkara itu tetapi tiada fee dipersetujui. Peguamcara penetapan kos memajukan dua bil kos jumlah kasar, satu untuk prosiding Mahkamah Tinggi sejumlah $40,000 dan satu lagi untuk prosiding Mahkamah Agung sejumlah $50,000. Klien telah menjawab melalui surat bahawa bil itu agak tinggi dan meminta peguamcara penetapan kos menetapkan bil itu di Mahkamah Tinggi bagi pihak mereka. Peguamcara penetapan kos menjawab melalui surat memberi persetujuan kepada permintaan untuk penetapan. Mereka berkata bahawa bil kos jumlah kasar ditarik balik dan bahawa mereka akan memaksimakan fee dan kos mereka dengan tegas menurut undang-undang. Mereka memberi amaran kepada klien supaya mendapatkan nasihat yang bebas apabila bil kos itu disampaikan kelak. Peguamcara meminta pengesahan bahawa bil kos akan ditetapkan dan bahawa dengan persetujuan bersama (mutual consent) sandaran tidak akan dibuat kepada bil kos jumlah kasar yang akan ditarik balik itu. Klien telah mendapat khidmat firma peguamcara yang lain dan seterusnya menjawab melalui surat, dengan salinan kepada peguamcara baru mereka, memberi pengesahan yang diminta itu dan seterusnya meminta 'bil akhir untuk prosiding sivil' dan 'bil baru'.

Telah dihujahkan bahawa walaupun pada pandangan pertama nampaknya dari surat-menyurat semasa dalam kes ini bahawa klien telah memberi persetujuan bagi peguamcara penetapan kos menarik balik bil kos jumlah kasar dan memfailkan bil kos yang baru untuk penetapan, pada pentafsiran sebenar, dan memandangkan keadaan kes, persetujuan klien bukanlah persetujuan benar kerana ia telah diberi menurut nasihat peguamcara penetapan kos yang tidak bebas dan bahawa persetujuan yang diberi itu dibatalkan oleh pengaruh tak wajar yang digunakan oleh peguamcara penetapan kos. Peguambela klien telah membuat bantahan permulaan, katanya tidaklah terbuka kepada peguamcara penetapan kos membuat tuntutan untuk bunga atas jumlah yang diluluskan untuk penetapan kerana peguamcara penetapan kos tidak mengemukakan hujah ini dalam satu notis bantahan balas yang ditujukan kepada penolong kanan pendaftar.

Diputuskan, meluluskan permohonan itu:

(1) Melainkan keadaan di mana boleh ditunjukkan bahawa pendaftar penetapan telah tersilap atas satu soalan prinsip, mahkamah tidak ada bidang kuasa bercampur tangan.

(2) Kesan ss 121(1) dan 132 Akta Profesyen Undang-Undang 1976 ('Akta itu') ialah seorang peguamcara boleh diberi upah berkenaan urusan perselisihan yang dikendalikannya, yang bukan tertakluk kepada persetujuan, melalui satu jumlah kasar, tetapi beliau mesti menyampaikan satu bil yang lengkap jika diminta berbuat demikian supaya bil itu boleh ditetapkan. Dalam keadaan begitu, bil jumlah kasar dibatalkan kerana ia 'tidak berkesan', dan keputusannya bil lengkap itu bukanlah penjelasan kepada bil jumlah kasar tetapi adalah bil gantian bagi semua tujuan, jadi jumlah yang dituntut boleh dinaikkan.

(3) Dalam keadaan kes, hujah bahawa persetujuan klien untuk penetapan kos dan mensifatkan bil jumlah kasar sebagai ditarik balik kerana ia terbatal akibat pengaruh tak wajar yang digunakan oleh peguamcara penetapan sememangnya tidak berkesan langsung.

(4) Tujuan pemberian bunga bukanlah untuk memampas satu pihak yang berjaya bagi apa-apa kecederaan yang dilakukan tetapi kerana ia dihindar dari mendapat wangnya. Lagipun, bunga boleh dituntut oleh seorang peguamcara biarpun ia tidak dinyatakan dalam bilnya (note of charges). Di bawah s 133 Akta itu, peguamcara penetapan berhak meminta mahkamah meluluskan bunga atas perbelanjaan yang didahulukan pada kadar overdraf yang sebenarnya dibiayai oleh peguamcara penetapan. Peguamcara penetapan sebenarnya telah membiayai tindakan undang-undang kliennya bergantung kepada akaun overdraf bagi tujuan itu. Pemberian bunga atas perbelanjaan dan kos yang dikeluarkan oleh peguamcara penetapan bagi pihak kliennya adalah satu hak di sisi undang-undang yang bersifat 'consequential' dan oleh kerana itu bukan satu perkara dalam makna A 59 k 34(1)

Kaedah-Kaedah Mahkamah Tinggi 1980. Sebagai asalan lain, akal dan keadilan membawa kepada kesimpulan bahawa peguamcara penetapan harus diberikan bunga atas perbelanjaan dan kos yang dikeluarkan oleh mereka bagi pihak klien mereka. Bunga harus dikira dari tarikh peguamcara penetapan diambil khidmat.]

Cases referred to

1 *Berta Services Sdn Bhd* v *Makhanlall & Co Ltd* [1989] 2 MLJ 269 (refd)
2 *Coon* v *Diamond Tread Co Ltd* [1950] 2 All ER 385 (folld)
3 *United Malayan Banking Corp Bhd* v *Syarikat Perumahan Luas Sdn Bhd* [1988] 3 MLJ 352 (refd)
4 *In re Tilleard* (1863) 32 Beav 476; 55 ER 187 (refd)
5 *In re Russell, Son & Scott* (1886) 55 LT 71 (refd)
6 *In re Taxation of Costs, In re Solicitors* [1943] KB 69 (refd)
7 *Siew Kuen Williams* v *Yong Siew In* [1984] 1 MLJ 95 (folld)
8 *Lee Hiok Ping & Ors* v *Lee Hiok Woon & Ors* [1989] 1 MLJ 156 (refd)
9 *London, Chatham & Dover Rly Co* v *South Eastern Rly Co* [1893] AC 429 (refd)
10 *Blair & Anor* v *Cordner* (1887) 19 QBD 516 (folld)
11 *Hunt* v *RM Douglas (Roofing) Ltd* [1988] 3 All ER 823 (refd)
12 *BP Exploration Co (Libya) Ltd* v *Hunt (No 2)* [1982] 1 All ER 925 (folld)
13 *Liau Kim Lian* v *Bajuria* [1971] 1 MLJ 276 (refd)

Legislation referred to

Civil Law Act 1956 s 11
Legal Profession Act 1976 ss 121(1), 132, 133
National Land Code 1965 s 120
Rules of the High Court 1980 O 59 rr 34, 35, 36
Law Reform (Miscellaneous Provisions) Act 1934 [UK] s 3
Solicitors' Remuneration (Gross Sum) Order 1934 [UK]

Mohd Nor (*Ong Guat Ean* with him) for the clients.
NG Sivanandan (*Karin Lim Ai Ching* with him) for the taxing solicitors.

Cur Adv Vult

Edgar Joseph Jr J: This was an application by the taxing solicitors that the review of taxation of the taxing solicitors' bill of costs as between themselves and their own clients ('the clients') herein by the senior assistant registrar be reviewed by this court pursuant to the Rules of the High Court 1980 ('the RHC') O 59 r 36.

The primary question for decision before the senior assistant registrar was whether on the taxation to allow in favour of the taxing solicitors an amount more than the gross sum bill which they had earlier rendered to the clients. At first, having had the advantage of full argument, the senior assistant registrar ruled in favour of the taxing solicitors and allowed a sum of $65,658.45. However, upon review, the senior assistant registrar reversed her earlier ruling relying on the judgment of Chan Sek Keong J in *Berta Services Sdn Bhd* v *Makhanlall & Co Ltd*[1] and allowed a sum of $40,454.15 inclusive of allocatur fees.

It is settled law that in cases such as the present, unless it can be demonstrated that the taxing registrar has erred on a question of principle, this court would have no jurisdiction to interfere. (See *Coon* v *Diamond Tread Co Ltd.*[2])

By way of background, it is material to state the facts which gave rise to the present proceedings. The clients, who were the chargee bank under a charge registered under the National Land Code 1965 ('the Code'), had retained the taxing solicitors to resist an application by the chargors thereunder, to set aside an order enforcing the charge by way of an order for sale previously made. In the event, after lengthy arguments, I had then granted the chargors the declaration sought and set aside the order for sale on the ground that the charge had been registered in breach of explicit statutory prohibition imposed on the title to the charged land pursuant to the provisions of s 120 of the Code, the title or interest of the chargee being defeasible since registration thereof had been obtained by means of an insufficient or void instrument and also because the Registrar of Titles, in registering the charge, had acted ultra vires the powers conferred upon him.

But then, acting on my own motion, and in exercise of my inherent powers to see that justice was done, I had made an order requiring the chargors to execute a fresh charge in terms of the former charge but mutatis mutandis. (See *UMBC* v *Syarikat Perumahan Luas Sdn Bhd (No 2).*[3]) A subsequent appeal and a cross-appeal to the Supreme Court were both dismissed.

The taxing solicitors had, before the hearing of the application to set aside the order for sale, informed the clients by letter that their fees would be substantial in view of the complexity of the matter but no fees had been agreed upon. In the event, after the final determination of the proceedings, the taxing solicitors delivered to the clients two bills, one dated 13 August 1988 in respect of the proceedings in the High Court for $40,000 and the other dated 15 December 1988 in respect of the proceedings in the Supreme Court for $50,000 or, in other words, for an aggregate sum of $90,000. The clients then replied by letter dated 27 March 1989 stating that they felt that the bills were on the high side and that they would like the taxing solicitors to have the bills taxed in the High Court on their behalf. Whereupon, the taxing solicitors replied somewhat lengthily by letter dated 5 April 1989 as follows:

> Dear Sirs,
>
> Re: Syarikat Perumahan Luas Sdn Bhd
> Our Bill Nos 19689 and 0609 dated
> 13 August 1988 and 15 December 1988 in respect of
> Penang High Court OS No 31-835-86 and
> Supreme Court CA No 355/88 respectively
>
> We refer to your telefax of 27 March 1989 and having noted the contents therein require your immediate confirmation of the following:

1 Your request to tax our costs in court in respect of matters handled by us concerning the Penang High Court Originating Summons No 31-835-86 as from November 1987 to July 1988 and the Supreme Court Civil Appeal No 355/88 as from August 1988 to December 1988 is pursuant to the Legal Profession Act 1976 s 126 (3) which reads:

> 'In any case where an advocate and solicitor and his client consent to taxation of a solicitor's bill the Registrar may proceed to tax the bill notwithstanding that there is no order therefor.'

2 As indicated in our telefax of 17 February 1989 our bills mentioned above were presented to you not on strictly client and solicitor basis but on a preferential basis out of indulgence owing to our long outstanding relationship between us and the bank. As indicated in the said fax memo we have done a thorough research on taxation on costs between solicitor and client and are fortified from authorities that strictly in law we are entitled to charge very much more. In the circumstances, by mutual consent between you and us no reliance is to be made on our bills mentioned above when our costs is taxed. In the circumstances, the above bills issued by us are duly withdrawn. We are in the process of preparing our bill of costs in respect of the above and will file in court and forward you the same shortly. When we serve the bill of costs on you, if you intend to resist, you will have to obtain independent advice as the proceedings in court will then be between you and us on the question of costs.

As you would appreciate that we intend to maximize strictly in accordance with law the amount of legal fees, disbursements and interest we will be entitled to, we will rely on the Solicitors Remuneration Order 1980 para 6 which entitles a solicitor to impose interest at 8% per annum on his disbursements and costs from the expiration of one month from demand from the client. The above entitlement sought by us is by virtue of the fact that we had not taken, which is usually done, substantial retainer fees before attending to the High Court and the Supreme Court matters mentioned above.

As to interest on disbursements, we will be claiming the sum as from the time the disbursements were made by us on your behalf particularly, before 3 September 1988. This again we are seeking strictly in compliance with case authorities. As the disbursements are advanced by us on an overdraft account, the interests claimable by us in law is the rate of interest we have to pay our bankers for the said overdraft.

In your telefax of 27 March 1989 as you are requesting us to tax our costs out of fairness to all parties concerned, we require confirmation to (1) and (2) above to ensure fairness to us when we proceed to tax our costs. In any event, please be informed that our bills mentioned above are withdrawn and will proceed to taxation and serve the bill of costs shortly.

Yours faithfully,

sgd

The clients then retained Messrs Shearn Delamore & Co, Advocates and Solicitors, on 14 April 1989, to act for them in the matter of the taxation, a fact which was brought to the attention of the taxing registrar. The clients had also by letter dated 2 May 1989, which was carbon copied to Messrs Shearn Delamore & Co, replied to the taxing solicitors' letter aforesaid agreeing to the taxing solicitors issuing the fresh bill proposed. That letter was in the following terms:

Dear Sirs,

Re: Syarikat Perumahan Luas Sdn Bhd

1 Penang High Court Suit No 23-300-87
2 Supreme Court of Malaysia Civil Appeal No 226/87
3 Notice of appeal to judge-in-chambers against the decision of senior assistant registrar
4 Penang High Court Originating Summons No 31-835-86
5 Supreme Court of Malaysia Civil Appeal No 355/88

The above matter refers.

We write to inform you that our management have decided to transfer all the existing suits in respect of the above account to a new firm of solicitors to pursue further on the litigation proceedings against the company and guarantors.

In this connection, kindly arrange to transfer the above files and cause papers to:

M/s Shearn Delamore & Co
and Drew & Napier
Advocates & Solicitors
6th Floor Wisma Penang Garden
No 42 Jalan Sultan Ahmad Shah
10050 Penang (Attention of Mr Khoo)

Meanwhile, we have instructed our Jelutong Branch to pay you $10,370.50 being your professional charges and disbursement on the fresh charge.

Please let us have your final bill on the civil proceedings and your fresh bills for above items (4) and (5) as mentioned in your letter dated 5 April 1989.

Yours faithfully,
United Malayan Banking Corp Bhd

sgd Ong Boon Hoo
Assistant Manager

Thereafter, on 3 June 1989, the taxing solicitors filed a bill of costs at the registry of the High Court for taxation of their fees.

Then, by a letter dated 26 June 1989, Messrs Shearn Delamore & Co, on behalf of the clients, conveyed the clients' express undertaking to settle the bill of costs as taxed. But, although the bill of costs in respect of the High Court proceedings had been taxed and the allocatur therein served upon Messrs Wong-Chooi and Mohd Nor as solicitors for the clients on 14 July 1990, the same has not to date been paid.

So much for the primary facts.

Now formerly a solicitor could deliver a gross sum bill, but on demand, had to deliver a detailed one which could be taxed. However, if the bill as taxed amounted to a larger sum than the gross sum the solicitor could not recover more than the gross sum. (See *In re Tilleard*[4] followed in *In re Russell, Son & Scott.*[5])

The present position, however, is governed by ss 121(1) and 132 of the Legal Profession Act 1976, the effect of which is that a solicitor might be remunerated in respect of contentious business done by him not the subject of an agreement, by a gross sum but he has to deliver a detailed bill of charges on demand in which case it can be taxed. In such a situation, the gross sum bill is wiped out, it being 'of no effect' with the result that the detailed bill is not explanatory of the gross sum bill, but is a substituted bill for all purposes so that the amount claimed therein may be increased.

In re Taxation of Costs, In re Solicitors[6] where the circumstances were exceedingly like those in the present case, a firm of solicitors acting in pursuance of the Solicitors' Remuneration (Gross Sum) Order 1934 (1), (which is generally in pari materia with ss 121(1) and 132 of our Legal Profession Act 1976), delivered to their client a gross sum bill. The client duly required a detailed bill of charges to be delivered and the solicitors duly complied with the requisition and the detailed charges were larger than the gross sum bill. The client having taken out a summons to tax, the taxing master held that the solicitors were only entitled to certain items of the gross sum bill and not to the amount of the detailed bill relating to those matters. On a summons to review taken out by the solicitors, Tucker J dismissed the same and the solicitors appealed. It was held by the Court of Appeal that the solicitors could recover the amount of the taxed bill although it exceeded the amount of the gross sum first charged.

MacKinnon LJ in the course of his judgment at pp 72-73 said this:

> ...the detailed bill was not merely an explanation of a previous request for payment of a gross sum put forward by the solicitors. It was an alternative charge insisted on by the client under the Solicitors' Remuneration (Gross Sum) Order 1934, and the client exercised her further right under the order to have the detailed bill taxed. If the client exercises those rights, she must bear the burden imposed on her by the order by paying that amount of the detailed bill which is found on taxation to be correct without taking into account the amount of the gross sum first asked for by the solicitor.

And, in a concurring judgment, Goddard LJ (as he then was) said this:

> If a solicitor delivers a gross sum bill and his client asks for a detailed bill, the solicitor must withdraw his gross sum bill and it is treated as if it had never been delivered. The detailed bill becomes the material bill and it is subject to taxation. That is relevant on the issue of payment of costs where the bill of the solicitor is reduced by more than one-sixth. The resulting position seems to me to be just and reasonable. The client who not being satisfied with the gross sum charged demands a detailed bill of charges must put up with the consequences, if the amount of the detailed bill turns out to be larger than the gross sum first charged. The client should remember the advice given long ago, which is especially true today: 'Agree with thine adversary quickly, whiles 'thou art in the way with him.'

In *Siew Kuen Williams* v *Yong Siew In*,[7] Siti Norma J applied the principles in *Re Taxation of Costs, In re Solicitors.*[6] In this context, the judgment of Chao Hick Tin JC in the Singapore case of *Lee Hiok Ping & Ors* v *Lee Hiok Woon & Ors*[8] will also repay reading.

Before me, it was argued by counsel for the clients that although at first glance it would appear from the contemporary correspondence in the case to which I have referred that the clients had assented to the taxing solicitors withdrawing the gross sum bills of costs and filing fresh bill of costs for taxation, on a proper construction thereof and, having regard to the circumstances of the case, the clients' assent was not a true assent since it was given as a result of advice given by the taxing solicitors which was not independent advice.

I regret I find this submission unacceptable. The clients in this case were a financial institution and they had, upon receipt of the gross sum bills, made a categorical request by the fax message dated 27 March 1989 requesting the taxing solicitors 'to have the bills taxed on our behalf'. In response to this, the taxing solicitors very properly replied by letter dated 5 April 1989 agreeing to the clients' request that the bills be taxed, adding that the gross sum bills were withdrawn and that they would be maximizing the amount of their legal fees and costs. Moreover, they had cautioned the clients to seek independent advice once the bill of costs was served upon them. But, what was more to the point was that the taxing solicitors in the concluding paragraph of their letter required confirmation from the clients on two points, namely, (1) that clients were requesting that the taxing solicitors do tax their bills of costs and (2) that by mutual consent, no reliance was to be placed on the gross sum bills which were to be withdrawn.

The clients then retained Messrs Shearn Delamore & Co to act for them and it was common ground that this was on 14 April 1989. Having no doubt that they had the advantage of this independent advice, they had then replied by letter dated 2 May 1989, with copy to Messrs Shearn Delamore & Co, giving the confirmation requested in the following words: 'Please let us have your final bill on the civil proceedings and your fresh bill for items (4) and (5) as mentioned in your letter dated 5 April 1989.'

In these circumstances, the submission of counsel for the clients, that the latter's assent to have the bills of costs taxed and to treat the gross sum bills as withdrawn because it was vitiated by undue influence exerted by instructing solicitors, must lose all its sting. It follows, that the stricture by counsel for the clients that the filing of the bill of costs for a higher sum than the gross sum bills 'would not be far short of blackmail', was groundless and, indeed, should never have been made.

The secondary question for decision before me, which arose following a preliminary objection by counsel for the clients was this. It was said that it was not now open to the taxing solicitors to make a claim for interest on the amount allowed for taxation as the taxing solicitors had not, in a cross objection notice addressed to the senior assistant registrar, taken the point. It was emphasized that the review by the senior assistant registrar was not at the instance of the taxing solicitors but the clients.

Counsel then cited in support O 59 r 34(1), (3) and r 35(1) of the RHC which he urged, limited the senior assistant registrar's jurisdiction on review to a consideration of the items specifically listed in the cross objection notice. I overruled the objection, in limine, as being devoid of substance for reasons which I shall now state.

It is too well known to need citation of authority that the object of an award of interest is not to compensate a successful party for any damage done but for him being kept out of his money. (See, however, *London, Chatham & Dover Rly Co* v *South Eastern Rly Co.*[9])

Moreover, the interest is claimable by a solicitor even though it is not stated in his note of charges. So, for example, in *Blair & Anor* v *Cordner*,[10] a solicitor delivered his bill to a client without claiming interest; the bill was taxed and the client paid the amount allowed on taxation. The solicitor then claimed interest thereon at 4% from one month from the date of delivery of the bill. It was held that the solicitor was entitled to such interest. The words 'from demand' mean 'from sending in the bill'.

And, indeed, under s 133 of our Legal Profession Act 1976, taxing solicitors are entitled to request the court to allow interest on disbursements advanced on the overdraft rate which the taxing solicitors have in fact to bear. It was pointed out by counsel for the taxing solicitors, without challenge, that the contemporary correspondence indicated that the taxing solicitors had in fact financed the clients' litigation relying on an overdraft account for this purpose.

In my view, the above considerations indicate that an award of interest on disbursements and costs incurred by the taxing solicitors on behalf of the clients, is a legal entitlement of a consequential nature and so is not an 'item' within the meaning of O 59 r 34(1) of the RHC.

Alternatively, if contrary to my primary view, the claim for 'interest' is an item within the meaning of O 59 r 34(1), then I have to consider whether or not to make an award of interest on the disbursements and costs incurred by the taxing solicitors in the exercise of my discretion under O 59 r 36(4).

In *Hunt* v *RM Douglas (Roofing) Ltd*,[11] Lord Ackner, speaking for the House of Lords said, inter alia, this at p 833:

> Barristers, solicitors and expert witnesses should not be expected to finance their clients' litigation until it is completed and the taxing master's certificate obtained. If interest is not payable on costs between judgment and the completion of taxation, then there is an incentive to delay payment, delay disbursements and taxation.

According to *Butterworths Costs* (4th Ed) Vol 1 p A 62, a solicitor can (like any other creditor) in an action against his client for his costs, include a claim for interest on such costs as from the date when the claim arose (see s 3 of the Law Reform (Miscellaneous Provisions) Act 1934 which is equivalent to our s 11 of the Civil Law Act 1956). As already noted, the taxing solicitors had in fact financed the clients' litigation relying on an overdraft account. Accordingly, reason and justice point to the conclusion that the taxing solicitors should be awarded interest on the disbursements and costs incurred by them on behalf of the clients.

The next questions are, for what period should the interest run and, at what rate? As regards this part of the case, it is material to consider when the cause of action arose in favour of the taxing solicitors against the clients.

In *Siew Kuen William*'s case,[7] Siti Norma J said at p 97:

> In the case of a solicitor and client bill the obligation to pay becomes due the moment the client engages the services of an advocate...

The following passage at p 992 in the judgment of Lord Brandon of Oakbrook in *BP Exploration Co (Libya) Ltd* v *Hunt (No 2)*[12] provides some indirect support for that view:

> It is, in my view, clear that there cannot be any general rule that, whenever the amount of any debt or damages payable by one party to an action to the other cannot be ascertained until judgment is given, the court should never, in the exercise of its discretion, award interest from a date earlier than the date of such judgment. To apply such a rule would, in my opinion, be plainly inconsistent with the express terms of s 3(1), Law Reform (Miscellaneous Provisions) Act 1934, (equivalent to s 11 of our Civil Law Act 1956) and in many cases, for instance in the case of a claim on a quantum meruit, work serious injustice on a successful plaintiff.

Accordingly, I agree with the view that interest should run from the date when taxing solicitors are retained.

As for the rate of interest, s 11 of the Civil Law Act 1956 confers power upon the court 'to award interest at such rate as it thinks fit on the whole or any part of the debt...'

However, before me, counsel for the taxing solicitors said that to simplify matters, the taxing solicitors

were prepared to claim interest at the rate of 8% pa only from one month after the date of the service of the bill upon the clients which was 13 September 1988 to date of taxation.

In all the circumstances, I would grant the application and set aside the order of the senior assistant registrar dated 28 June 1990 allowing, on review of taxation, the sum of $40,454.15 (inclusive of allocatur fees) and restore her earlier order dated 15 March 1990 allowing, on original taxation, the sum of $65,658.45 but this will be exclusive of the allocatur fees. There will also be consequential orders entitling the taxing solicitors to payment of interest at the rate of 8% pa on disbursements and costs incurred by them with effect from 13 September 1988 that being the date of expiry of one month from date of the service of the bill on the clients, and interest after taxation at the rate of 8% pa from date of taxation to date of payment. (See *Liau Kim Lian* v *Bajuria*.[13])

Finally, the clients must also pay the taxing solicitors the costs of the proceedings both here and before the senior assistant registrar.

Application allowed.

Solicitors: *Wong-Chooi & Mohd Nor; Presgrave & Mathews.*

Reported by *PS Ranjan*

Development & Commercial Bank Bhd v Brimal Sdn Bhd (Syarikat Oriental Elastic Industries, Third Party)

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO C548 OF 1985
ZAKARIA YATIM J
22 OCTOBER 1990

Negotiable Instruments — Bills of exchange — Bill of exchange dishonoured upon presentment — Whether plaintiff had capacity or title to bring action — Whether defendant had to be given notice of dishonour — Whether plaintiff entitled to enter summary judgment against the defendant — Defences against claim on bill of exchange — Bills of Exchange Act 1949 (Rev 1978), ss 2, 3(1), 17(1), 38(a), 47 & 48

This was a hearing in open court for further arguments pursuant to an appeal against an earlier decision dismissing the plaintiff's application to sign final judgment against the defendant for a sum of $306,428.34 together with interest on the principal sum of $255,000 at 18% pa from 3 October 1984 till date of final payment and costs.

The defendant was the acceptor of a bill of exchange drawn by Oriental Elastic Industries Company ('OEIC') and indorsed by OEIC to the plaintiff. The bill was presented to the defendant for payment but was dishonoured. The plaintiff therefore claimed for the amount owing in respect of the dishonoured bill and interest. The defendant denied all the plaintiff's allegations in the statement of claim, claiming: (i) that the plaintiff had no capacity or title to bring the present action as plaintiff; (ii) that it was not given any notice of dishonour for non-payment in accordance with the provisions of the Bills of Exchange Act 1949 (Rev 1978) ('the Act'); and (iii) that all its liabilities under the bill of exchange had been discharged by subsequent payments made by the defendant to the drawer of the bill.

Held, allowing the appeal:

(1) The plaintiff was under no obligation to give the defendant notice of dishonour. Under s 48 of the Act the plaintiff was only required to give notice of dishonour to the drawer of the bill.

(2) Under s 38(a) of the Act one of the rights and powers of the holder of a bill of exchange is that he may sue on the bill in his own name. The word 'holder' is defined in s 2 as the payee or indorsee of a bill of exchange. The plaintiff was the holder of the bill of exchange in the present case and was therefore entitled to sue the defendant on the bill in the plaintiff's name.

(3) There was neither fraud nor illegality or failure of consideration pleaded in the statement of defence. The defendant therefore had no defence to the plaintiff's claim and the plaintiff was therefore entitled to enter summary judgment against the defendant under O 14 of the Rules of the High Court 1980.

[Bahasa Malaysia summary

Ini adalah satu pembicaraan dalam mahkamah terbuka bagi hujah lanjut berikutan dengan suatu rayuan terhadap suatu keputusan terdahulu menolak permohonan plaintif untuk memasukkan penghakiman muktamad terhadap defendan untuk wang sejumlah $306,428.34 bersama-sama dengan faedah atas jumlah pokok, $255,000 pada 18% setahun dari 3 Oktober 1984 sehingga tarikh pembayaran terakhir dan kos.